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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/399,630	09/20/1999	GARY M. REYNOLDS	KCC-12.681	2481

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EXAMINER

REICHLE, KARIN M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 02/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/399,630

Applicant(s)

REYNOLDS ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-30,32-43,45-52 and 54-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-30,32-43,45-52 and 54-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

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1. The request filed on 9-25-02 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/399,630 is acceptable and a CPA has been established. An action on the CPA follows.
2. Claims 32 and 38 are objected to because of the following informalities: in claim 32, line 2, after "member", --thrust portion-- should be inserted. In claim 38, "a" should be --the--. Appropriate correction is required.
3. Claims 34-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 28, the gasketing assembly includes a "compression resistant member thrust portion" whereas in claims 34 and 35 the thrust portion includes a compression member, i.e. "the ... member of each of the pair...thrust portions". It is therefore unclear whether such are one and the same. If so, than claim 34 is redundant, see claim 28, line 10 and claim 33. Also, in claim 35, line 2, "of ...of" should be deleted and "is" should be --are each--. Also claim 30 is redundant, see discussion infra. In claim 43, are the thrust portions on line 3 and those on line 10 of claim 28 one and the same, i.e how many thrust portions are being claimed at a minimum?

4. Applicant is advised that should claims 28 and 33 be found allowable, claims 30 and 34 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as

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being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). See claim 28 , lines 8 et seq, i.e. if the face is deployed toward the rear waist to fill the void it is adjacent the rear waist and see claim 33 and line 10 of claim 28.

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 28-30, 32-43,45-52, and 54-59 are rejected under 35 U.S.C. 102(b) as being anticipated by Schaar '150.

Claims 28-30, 36-38, 45, 54-55 and 57: See Figures 1-16, col. 1, lines 57-62, col. 3, line 41-col. 6, line 51, especially col. 4, lines 8-21 and 60-66 , and col. 5, lines 36-55, i.e.

“Accordingly....the backing sheet forms a waterproof pocket to capture urine....regions of the backing sheet...are permitted to gap away...The elastic band means 53 brings the waistline portion of the diaper into close contact with the infant’s skin and these free regions of the end section serve to form a gasket against the infant’s skin...” Therefore, e.g., the gasketing assembly is 48, and stretchable material is 55, the compression resistant member thrust portion is at least a portion of panels A, B, D, E of 48, see, e.g., Figures 6 and 10. The thrust portions include multiple layers, i.e. topsheet, backsheet and, optionally the absorbent pad, see col. 4, lines 8-21, as well as panel portions, or in other words, member(s) which resist compression either expressly, see col. 1, lines 57-62, i.e. “...pleat means being laterally expandable...elastic means ...laterally constraining... when expanded”, or inherently due to the folds , the materials, the number of layers, etc.

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It is noted that the structure of the member nor its specific compression resistance is set forth. It is also noted that all materials resist compression to some extent, i.e. it is a relative property.

Claims 28, 33, 46-47, and 56: Face portion is at least a portion of panel C of 48 and thrust portions are discussed supra.

Claims 33-34, 39, 41, 48, 50, and 59: See, e.g., Figure 8, i.e. each gap on opposite sides of the centerline can be considered a gasket element.

Claims 32 and 35: the layers 28 and 32 encase 36. The terminology "soft" is considered relative.

Claims 40, 42-43, 49, 51-52 and 58: The body side liner is surface 28 of 48 and leg portions are at least portions of A, B, D, E of 48, see, e.g., Figures 6-8.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The other references show various fluid pockets, see, e.g., Figure 3 of Nesgood, Figure 9 of Olsson.

8. Applicant's remarks on pages 5-9 with regard to the informalities have been noted but are either deemed moot in that the specific issue discussed has not been reraised or is deemed nonpersuasive for the reasons set forth supra. Applicant's remarks with regard to the prior art on pages 9 et seq have been considered but are deemed narrower than the teachings of the Schaar reference, see Figures and text of the Schaar referred to supra, e.g., the Schaar reference teaches deployment toward the rear waist, i.e. lower back, of at least a portion of panel C by at least a

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portion of panels A, B, D, E to form a pocket and gasket. Compare Figures of Schaar and Figures of instant application.

9. Any inquiry concerning this communication should be directed to K. M. Reichle at telephone number 703-308-2617.

K. M. Reichle
KIM REICHEL
PATENT EXAMINER

KMR

January 29, 2003